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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 808

RONALD L. TREE AND NANCY PERKINS FIELD
TREE, HIS WIFE,

Petitioners,

vs.

THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF CLAIMS

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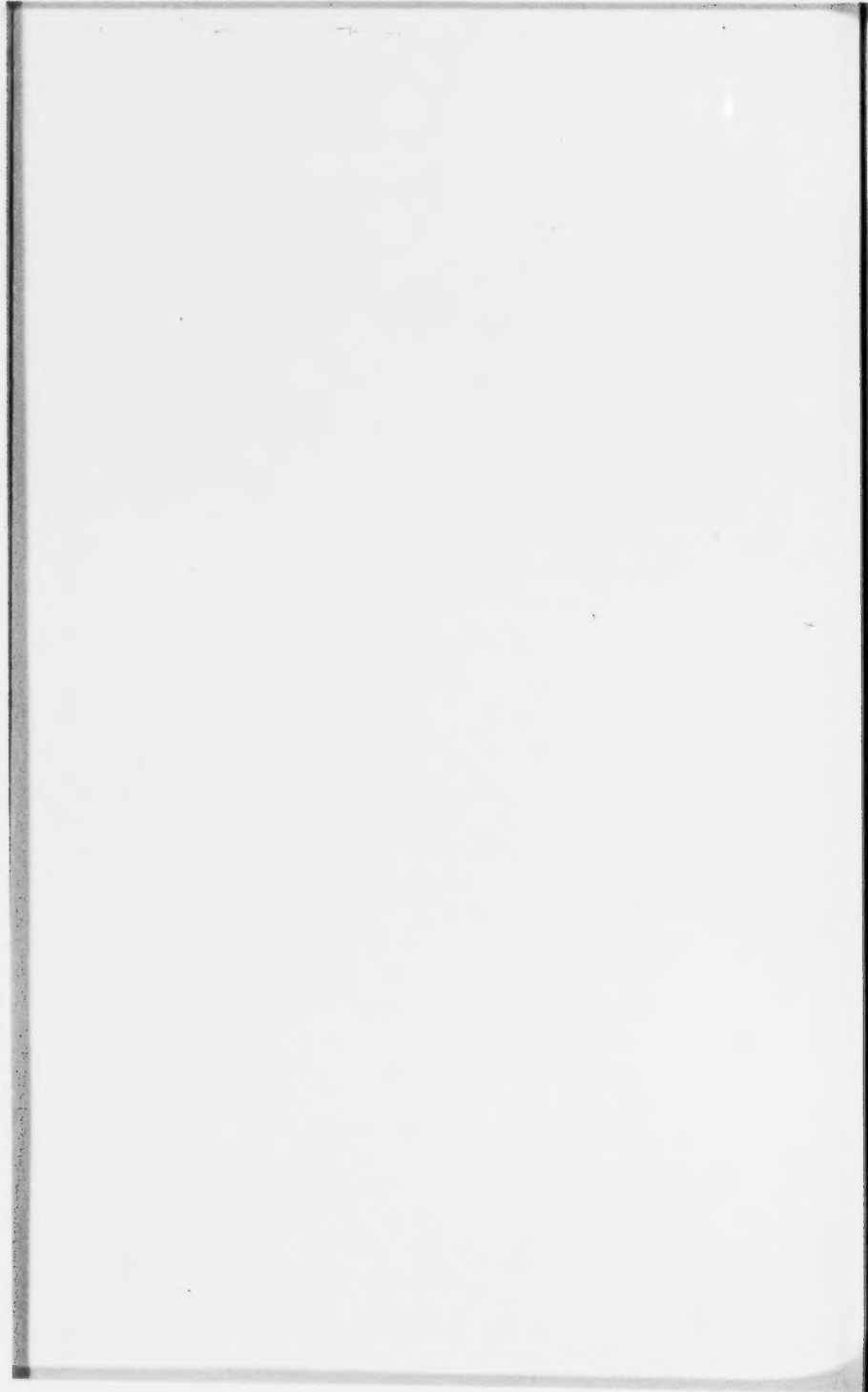
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 808

RONALD L. TREE AND NANCY PERKINS FIELD
TREE, His Wife,
vs. *Petitioners,*
THE UNITED STATES.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS OF THE UNITED STATES

The petitioner prays that a writ of certiorari issue to review the judgment of the Court of Claims of the United States entered on October 2, 1944 (R. 30).

Opinion Below

The opinion of the Court of Claims (R. 28-29) is reported in 55 F. Supp. 438.

Jurisdiction

The judgment of the Court of Claims was entered October 2, 1944 (R. 30). Jurisdiction is conferred on this Court by section 3 (b) of the Act of February 13, 1925, 43 Stat. 939, as amended by the Act of May 22, 1939, 53 Stat. 752.

Question Presented

Whether an annuitant is taxable on a fixed annuity paid to her out of the income of a testamentary trust pursuant to a consent decree and concurrent agreement (between the annuitant and a beneficiary of the trust) providing that the annuity must be paid regardless of the sufficiency or insufficiency of the trust net income.

Statutes Involved

The statutes involved appear in the Appendix, *infra*, pp. 9-10.

Statement

The facts, correctly found by the Court of Claims (R. 8-25), are briefly these:

Marshall Field by his will left the residue of his estate in trust for two grandsons, Marshall Field and Henry Field (R. 9). Each grandson was to receive specified payments out of the trust corpus at specified ages, and, after a period of accumulation, specified portions of the trust income (R. 9-10). These portions of income were to increase as the grandsons became older (R. 10). When the grandson, Marshall, should reach age fifty, the trust estate was to be distributed to each grandson in certain proportions (R. 10). If one of the grandsons should die without issue before the trust estate was distributed, the decedent's share of the trust was to go to the surviving grandson (R. 10).

The co-plaintiff, Nancy Tree, then Nancy Perkins, in 1917 married Henry Field who died later that year (R. 9). In litigation as to the duties of the trustees and the rights, after Henry's death, of the grandson Marshall, the co-plaintiff, then Nancy Field, filed a pleading in which

she claimed dower in Henry's share of the trust realty held during the period of her marriage to Henry (R. 11-12).

Some time prior to July 13, 1920 (the date of the decree mentioned below), the co-plaintiff, Nancy Tree (who in the meantime had married Ronald L. Tree, plaintiff herein) and Marshall Field entered into a written agreement subsequently dated July 14, 1920 (R. 16). That agreement provided that a decree might be entered in the then pending equity suit sustaining Mrs. Tree's dower claim as against Marshall and all persons claiming a trust interest under him, and that there should be paid to Mrs. Tree in satisfaction of her dower a fixed life annuity of \$75,000 (later changed by agreement to \$85,000) so long as Marshall, or any persons claiming under him, should receive the net income from Henry's share of the trust (R. 16-17). On July 13, 1920, a final decree was entered holding, among other provisions, that, since the only beneficiary who would be affected by the allowance of Mrs. Tree's dower claim, so long as the income from Henry's share of the trust should be payable to or subject to the disposition of Marshall, was Marshall, and since Marshall was agreeable to the allowance of her dower claim, she was entitled to dower as against Marshall and all persons claiming a trust interest under him for the period that the income from Henry's share should be payable to or subject to the disposition of Marshall (R. 12-16).

The agreement of July 14, 1920, between Marshall Field and Mrs. Tree, and the later agreement increasing the annuity to \$85,000 a year, were delivered to the trustees who, finding the net income sufficient, each year paid the agreed annuity out of Henry's share (to which Marshall had succeeded) of the realty income (R. 16-18).

The plaintiff, Ronald L. Tree, following a ruling by the Commissioner of Internal Revenue that the annuity was

not taxable to Mrs. Tree, filed joint income tax returns for himself and Mrs. Tree for the taxable years 1930 and 1931 here in controversy (R. 19-21). Later, however, the Commissioner reversed his ruling, and imposed the tax on the annuity which was challenged in the Court of Claims (R. 21-24).

The Court of Claims held that the annuity was taxable to Mrs. Tree as dower income or as income received by the assignee of a trust beneficiary, and that the agreement with Marshall Field, providing for an annual sum certain irrespective of the sufficiency of the trust income, was merely to be regarded as an "additional promise" which did not affect "the nature of Mrs. Tree's interest." It is the plaintiffs' position that, while the *trustees* could make the payments only out of income, the agreement with Marshall Field for payment of the sum certain was the element which gave to the plan and resultant transactions their very existence and character, and that the disregard of this element by the Court of Claims created a conflict with decisions of this Court.

Specification of Errors to Be Urged

The Court of Claims erred:

1. In treating the agreement for unconditional payment of the annuity as a mere incident to the transactions involved rather than as a vital and determinative part of them.
2. In holding that Mrs. Tree was an assignee of a part of the trust income.
3. In holding that the annuity was taxable to Mrs. Tree.
4. In failing to give judgment for the plaintiffs upon the basis of excluding the annuity from taxable income.

Reasons for Granting the Writ

1. The decision of the Court of Claims is in probable conflict with the decisions of this Court in *Burnet v. Whitehouse*, 283 U. S. 148, 75 L. Ed. 916, and *Helvering v. Butterworth, et al.*, 290 U. S. 365, 78 L. Ed. 365 (*Pardee* case). In these cases annuities provided by will were, in fact, paid out of income. Because, however, the annuities were payable "at all events," this Court held in each instance that the payment was not a distribution of income.

The fact that in the present case the annuity was provided for by a consent decree and concurrent agreement rather than by will, should not affect the result under the rule announced in *Lyeth v. Hoey*, 305 U. S. 188, 83 L. Ed. 119. In that case, an heir, left out of a will, entered into an agreement with the legatees, devisees, executors, and other heirs, under which he received property in compromise of his claim that the decedent's will was invalid. This Court held that the property was received by inheritance since the theory of heirship under an invalid will underlay the compromise, and that it was not taxable to the heir as income. Similarly, here one should look to the agreement (which alone mentioned the \$85,000 annuity, the court decree being silent on the amount) to determine what Mrs. Tree received. It is a failure to give full effect to the *Lyeth v. Hoey* decision to say, as the Court of Claims did (R. 27, 28), that the agreement shows the kind of *interest*—dower—for which Mrs. Tree was paid, without also recognizing that the agreement determines the kind of *payment being made for that interest*, that is, an annuity payable "at all events."

The United States Board of Tax Appeals in *Chase National Bank, et al. v. Commissioner*, 40 B. T. A. 44, construed the *Lyeth v. Hoey* opinion as requiring it to give

effect to a provision for payment at all events in an agreement between a widow and the executors and trustees under her husband's will. The widow had threatened to enforce her rights as a widow adversely to the will and by the agreement received an annuity. The Board said that, in view of the certainty of payment of the annuity, the widow took by inheritance, citing the *Helvering v. Butterworth*, *Burnet v. Whitehouse*, and *Lyeth v. Hoey* decisions hereinbefore mentioned.

In our view, there is no fact in the case at bar to distinguish it from the above-cited decisions, and, if allowed to stand, the decision of the Court of Claims will be known¹ as in substantial conflict with, and as a confusing encroachment upon, principles announced by this Court.

2. The decision of the Court of Claims is also in probable conflict with the decision of this Court in *Blair v. Commissioner*, 300 U. S. 5, 81 L. Ed. 465.

The Court of Claims held that, if Marshall Field, rather than Mrs. Tree, was the beneficiary, then the consent decree and agreement constituted an assignment by Field to her of a portion of the trust income. This, said the Court, would make Mrs. Tree taxable on the authority of the *Blair v. Commissioner* decision. The *Blair* decision is limited, however, to holding that an assignee is taxable on trust income where there has been a valid transfer which makes the assignee the owner of an equitable interest in the trust. That Mrs. Tree did not have absolute ownership, as distinguished from the qualified interest of a creditor, is shown by the obvious fact that if Field had paid

¹ It may be worth noting that one of the tax services has digested the decision below under the caption "Earlier decisions to the contrary" following a statement of the *Lyeth v. Hoey* rule. CCH Standard Federal Tax Reporter, 1945, Vol. 1, paragraph 51.4893.

her \$85,000 in a given year out of his own accumulations, she would not have been entitled to any part of the trust income for that year.

This conclusion that there was an assignment to Mrs. Tree was evidently the basis for the view below that the provision for payment at all events was analogous to a seller's guaranty in selling income-producing property that the purchaser will receive a specified minimum amount of income (R. 28, 29). The analogy wholly fails because in the hypothetical case there would be a transfer of the income-producing property and the property and the income therefrom would belong to the purchaser whereas in the case at bar, as mentioned hereinbefore, if Field had paid Mrs. Tree \$85,000 in any year, clearly she would not have been entitled to any payment by the trustees. As in *Chase National Bank, et al. v. Commissioner*, 40 B. T. A. 44, payment of the annuity out of trust income was an arrangement to give the annuitant security for the annuity, and did not make her an income beneficiary of the trust.

There is, moreover, a serious question whether, under the *Blair* rule, there can be a valid assignment of a *stated amount* of trust income as distinguished from a specified *fractional part* of the income. The assignment of a fractional part of trust income is construed to be a transfer of ownership of the same fractional part of the property which produces the income, but the assignment of a stated amount of income, without reference to any ascertainable portion of the income-producing property, does not seem to constitute the assignment of any portion of the property itself.

This conflict with the *Blair* decision seems important enough alone to warrant an exercise of this Court's power of supervision.

WHEREFORE, it is respectfully submitted that this petition should be granted.

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APPENDIX

Statutes Involved

Revenue Act of 1928, c. 852, 45 Stat. 791:

Sec. 22 Gross Income

* * * * *

(b) Exclusions from Gross Income.—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * *

(2) Annuities, Etc.—Amounts received (other than amounts paid by reason of the death of the insured and interest payments on such amounts) under a life insurance, endowment, or annuity contract, but if such amounts (when added to amounts received before the taxable year under such contract) exceed the aggregate premiums or consideration paid (whether or not paid during the taxable year) then the excess shall be included in gross income. In the case of a transfer for a valuable consideration, by assignment or otherwise, of a life insurance, endowment, or annuity contract, or any interest therein, only the actual value of such consideration and the amount of the premiums and other sums subsequently paid by the transferee shall be exempt from taxation under paragraph (1) or this paragraph;

(3) Gifts, Bequests, and Devises.—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

Sec. 162 Net Income

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.





No. 1003

In the Supreme Court of the United States

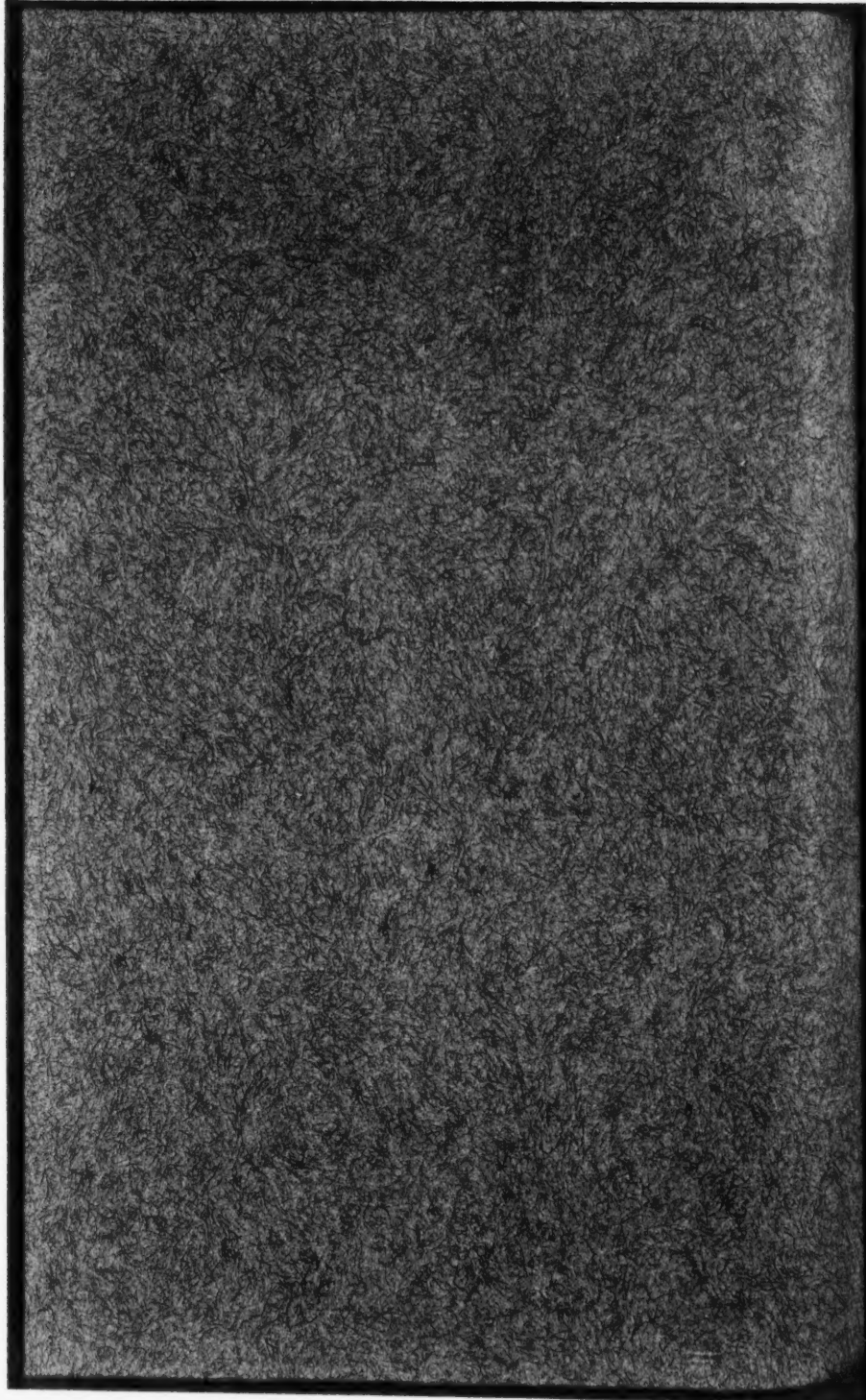
October Term, 1964

RONALD L. DICK AND GEORGE FRANKLIN DICK, Petitioners,
v.
THE WASHINGTON POST, Respondent.

Case No. 1003

ON PETITION FOR WRIT OF HABEAS CORPUS AND FOR WRIT OF HABEAS AD REMOVED

FROM THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA



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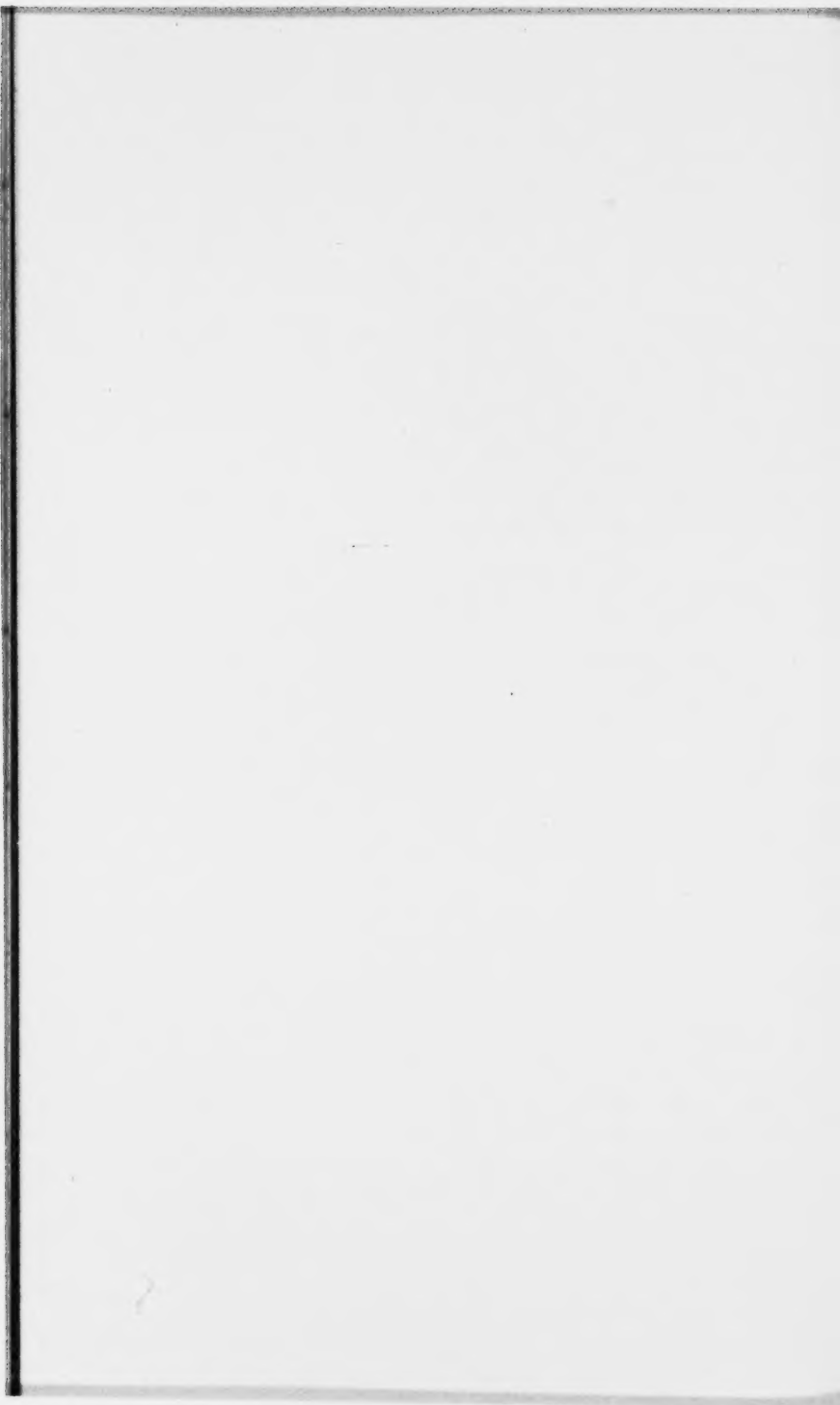
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(1)



In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 808

RONALD L. TREE AND NANCY PERKINS FIELD TREE,
HIS WIFE, PETITIONERS

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 25-29) is reported in 55 F. Supp. 438.

JURISDICTION

The judgment of the Court of Claims was entered October 2, 1944. (R. 30.) The petition for a writ of certiorari was filed January 2, 1945. The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

(1)

QUESTION PRESENTED

One of the petitioners herein contended in a court proceeding that she was entitled to dower in real property held under a trust of which her deceased husband was a beneficiary, and the other party in interest agreed that her claim should be allowed. The question involved is whether an amount paid to her out of the income of the trust in accordance with a court decree directing that the amount be paid "wholly" out of income constitutes taxable income to her under the provisions of Section 162 (b) of the Revenue Act of 1928.

STATUTE INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22. GROSS INCOME.

(a) *General definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever.

(b) *Exclusions from gross income.*—The following items shall not be included in

gross income and shall be exempt from taxation under this title:

* * * * *

(3) *Gifts, bequests, and devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

* * * * *

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under subsection (c) of this section in the same or any succeeding taxable year;

* * * * *

STATEMENT

The special findings of fact of the Court of Claims (R. 9-25) may be summarized as follows:

Petitioners, Ronald L. Tree and Nancy Perkins Field Tree, are husband and wife. Nancy Perkins Field Tree was born September 10, 1897. On February 7, 1917, she married Henry Field, who died July 8, 1917, without issue. She later married Ronald L. Tree, one of the petitioners. (R. 9.)

Henry Field and his brother, Marshall Field III, were two of the surviving grandsons of Marshall Field, who died on January 16, 1906. These two grandsons were the beneficiaries mentioned in the twentieth article of the will of Marshall Field. By this article of the will, Marshall Field left the residue of his estate in trust for the two grandsons, Marshall, who received a three-fifths portion, and Henry, a two-fifths portion. Portions of the income were to be paid to the grandsons, the amounts to be increased as they grew older; and when Marshall reached the age of fifty the trust estate was to be distributed to Marshall and Henry, three-fifths and two-fifths respectively. (R. 9-10.)

This twentieth article of the will further provided that if either of the grandsons should die before the distribution of the corpus, without leaving issue, the entire trust estate was to go to the other grandson and to his issue. (R. 10.)

After Henry's death the trustees filed in the proper court a bill asking the court to enter a decree as to the correct method of computing the net income derived in each year from the trust estate. Marshall Field III filed a cross-bill asking that the court direct the trustees to pay over to him free of any trust all or part of the trust estate. (R. 11.)

Nancy Perkins Field, later Nancy Perkins Field Tree, who had been made one of the parties defendant by the cross-bill of Marshall Field III, filed an answer to the cross-bill in which she claimed a dower interest in two-fifths of the realty held by the trustees during the period of her marriage to Henry Field and in the proceeds of any such realty as might have been sold. (R. 11-12.)

The court on July 13, 1920, entered a decree stating, *inter alia*, that since Marshall Field III, the only beneficiary who would be affected by the claim for dower so long as the income from Henry's two fifths share was payable to him, had stated that he did not oppose the claim, it found in favor of the allowance of the claim. (R. 12-14.) As a result of this decree the court entered an order which provided with respect to the allowance for dower in part as follows (R. 14-15):

(n) That as against Marshall Field III and all parties claiming an interest in the residuary estate through or under him Nancy Perkins Field, the widow of Henry

Field, is entitled to dower in an undivided two-fifths ($\frac{2}{5}$ ths) part of any and all real estate now held in fee by the Trustees under Article Twentieth of the will of Marshall Field, deceased, which was acquired by them before Henry Field's death, and also in two-fifths ($\frac{2}{5}$ ths) of the proceeds of any such real estate so held by the said Trustees in fee at any time during the continuance of said marriage which has been sold or transferred by the said Trustees either before or after the death of said Henry Field. * * * and the court further adjudges and decrees that after the division of the residuary estate as in this decree provided, the amount payable to the said Nancy Perkins Field for her said dower shall be paid by the said Trustees wholly out of the income of Henry Field's share (or two-fifths) of the said residuary estate, and that Marshall Field III's share (or three-fifths) of the residuary estate shall be held by the Trustees, free from any dower rights of the said Nancy Perkins Field.

The foregoing adjudication as to the dower rights of said Nancy Perkins Field shall not so long as the income of said two-fifths share is payable to, or subject to the disposition of Marshall Field III under the provisions of said will and of this decree, bind any party to this cause other than said Trustees, Marshall Field III, and those claiming an interest in the residuary

estate through or under said Marshall Field III. * * *.

Sometime prior to July 13, 1920, the date of the decree and order, Nancy Perkins Field Tree, hereinafter referred to as Nancy Tree, and Marshall Field III entered into a written agreement which was subsequently dated July 14, 1920, and delivered to the trustees under the twentieth article of the will of Marshall Field. That agreement, after referring to the pending proceeding and to the fact that Nancy Tree was claiming a dower interest in the residuary estate held by the trustees under the twentieth article of Marshall Field's will, stated that, since a serious question existed as to whether the claim for dower could be maintained and since the parties were desirous of settling the claim, it was agreed between them that a decree might be entered sustaining Nancy Tree's claim for dower as against Marshall Field III, and that the amount payable to Nancy Tree in satisfaction of her right of dower was fixed at \$75,000 per year. This amount was later changed by agreement to \$85,000 per year. (R. 16-17.) The trustees were thereafter notified by Nancy Tree and Marshall Field III that they had agreed that \$85,000 per year should be paid to Nancy Tree. (R. 17-18.)

During each of the years from 1921 to and including the year 1931, the trustees paid to Nancy Tree the amount of \$85,000 specified in the agreement. One-third of two-fifths of the annual net

income from the real estate held by the trustees during the period of Nancy Tree's marriage to Henry Field and which was still held during the years 1930 and 1931, not including income from the proceeds of such real estate as might have been sold, amounted to \$269,635.18 and \$219,864.43 for the years 1930 and 1931, respectively. (R. 18-19.)

For the calendar years 1930 and 1931 the petitioners filed joint income tax returns. The return for 1930 did not include any part of the amount of \$85,000 received by Nancy Tree in that year from the trustees under the will of Marshall Field. (R. 20.) For the year 1931 the return included \$9,797.91 of the amount of \$85,000 received by Nancy Tree during 1931 from the trustees under the will of Marshall Field. (R. 21.)

Additional assessments of income taxes for the years 1930 and 1931 were made by the Commissioner of Internal Revenue. In making these assessments the Commissioner included the total amounts received by Nancy Tree from the trustees during those years in her gross income. The deficiencies so asserted were duly paid with interest. (R. 21-22.) Claims for refund¹ were later filed alleging that no part of the amounts

¹ The Government contended in the court below that no timely claim for refund for 1930 was filed; that the claim filed in 1938 was filed after the statutory period for filing claims had expired and this suit could not be maintained for that year. The court, however, did not find it necessary to decide this question, since it held that the petitioners were not

of \$85,000 received in each year constituted taxable income. (R. 23-24.)

The Court of Claims in its opinion (R. 25-29) held that the amounts of \$85,000 paid in 1930 and 1931, respectively, constituted taxable income to Nancy Tree in their entirety. Judgment was entered for petitioners in the amount of \$8,983.43 upon an issue which is not involved in this petition for certiorari. (R. 30.)

ARGUMENT

The decision of the court below that the amounts paid to Nancy Tree by the trustees under the will of Marshall Field constitute taxable income to her is correct and is in accordance with the decision of this Court in *Helvering v. Butterworth*, 290 U. S. 365. The amounts paid to Nancy Tree by the trustees in 1930 and 1931 were out of trust income. The court decree ordered the trustees to pay the amounts to Nancy Tree "wholly out of the income" of the trust property. (R. 15.) This decree was certainly binding upon the trustees regardless of any collateral agreement made between Nancy Tree and Marshall Field III. The agreement, moreover, referred to the decree and it would seem that the two should be considered together and that the agreement simply fixed the amount to be paid by the trustees out of the income entitled to any refund for the year 1930. In the event certiorari is granted, we intend to press this defense, but we believe it unnecessary to set forth the record facts in relation thereto (R. 23-24) in this brief.

come. The Board of Tax Appeals held in the case of *Continental Illinois Nat. Bank & Trust Co., Trustee v. Commissioner*, 40 B. T. A. 25, a proceeding brought by the trustees under the will of Marshall Field involving the identical payments for 1930 and 1931 which are in controversy here, that the trustees were entitled to deduct the amounts so paid as income to be distributed currently by the fiduciary to a beneficiary under the provisions of Section 162 (b) of the Revenue Act of 1928, *supra*. The decision of the court below is in accord with that decision. This Court in the *Butterworth* case, *supra*, involving the same provisions of the Revenue Act, held that a widow under a will who elects to take the income from a trust fund in lieu of dower becomes a beneficiary within the ambit of that section and is taxable on the income paid to her by the trustee. In *Helvering v. Pardee*, decided with the *Butterworth* case, at pages 370 and 371, this Court, applying *Burnet v. Whitehouse*, 283 U. S. 148, held on the other hand that where a widow under a will was given an annuity of a certain amount which was payable at all events and did not depend upon income from the trust estate, the widow was in the position of an ordinary legatee and that amounts paid to her were not distributions of income but were in discharge of a gift or legacy. The test is therefore whether the amounts are to be paid wholly out of income or whether in event the income is insufficient they become a charge upon the

corpus of the estate. There is no dispute in this case that the amounts were paid to Nancy Tree out of the income of the trust and it is clear that the trustees had absolutely no power to invade or use the corpus of the trust for this purpose. It is unnecessary to speculate as to what would happen if the trust income were insufficient to pay the \$85,000 per year or whether in such event Marshall Field III would be bound to make up the deficit.

There is no conflict with the decision in *Lyeth v. Hoey*, 305 U. S. 188, for the question involved is entirely different. In that case an heir who had been left out of a will sued to contest the will and the suit was compromised. The question was whether the property received by the heir was an inheritance or went to him by virtue of the compromise agreement, the state law being to the effect that rights so received were contractual and not testamentary. This Court held that the heir received the property by inheritance for Federal revenue act purposes and its receipt was therefore not subject to the income tax. The property there was part of the corpus of the residuary estate and there was no trust income involved.

Even if an assignment of income be deemed to have been made by Marshall Field III in his agreement with Nancy Tree, the decision of this Court in *Blair v. Commissioner*, 300 U. S. 5, sustains the decision below. In that case it was held that a primary beneficiary under a trust entitled

to the income for life could transfer a part or all of his interest and that the transferee became the owner of the specified interest and was taxable upon the income from it. Cf. *Pearce v. Commissioner*, 315 U. S. 543, in which a husband, having agreed in a separation agreement to make monthly payments to his wife, purchased an annuity of \$500 a month for her. This Court held that the monthly payments were income taxable to the wife rather than to the husband, citing the Blair case. By virtue of either the court decree or the agreement Nancy Tree clearly became the equitable owner of an interest in the trust necessary to produce an income of \$85,000 per year and is taxable upon the income.

CONCLUSION

No conflict has been shown. The decision of the court below is clearly correct and the petition should be denied.

Respectfully submitted.

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FEBRUARY 1945.





5
No. 808

FILED

FEB 28 1945

CHARLES ELMORE BROFFLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

RONALD L. TREE and NANCY PERKINS
FIELD TREE, His Wife,

Petitioners,

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CLAIMS

REPLY BRIEF FOR PETITIONERS

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Of Counsel,

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Washington, D. C.

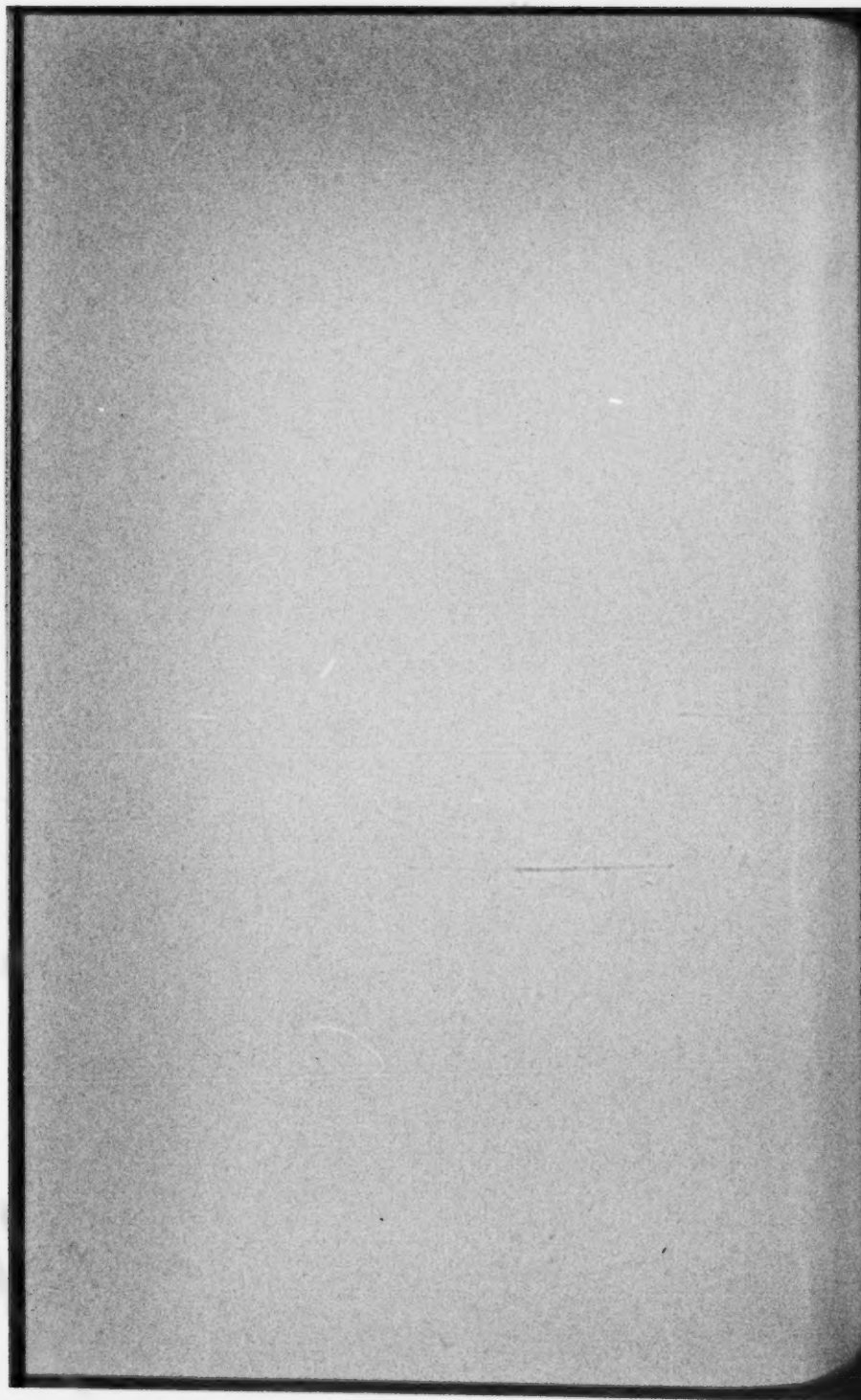
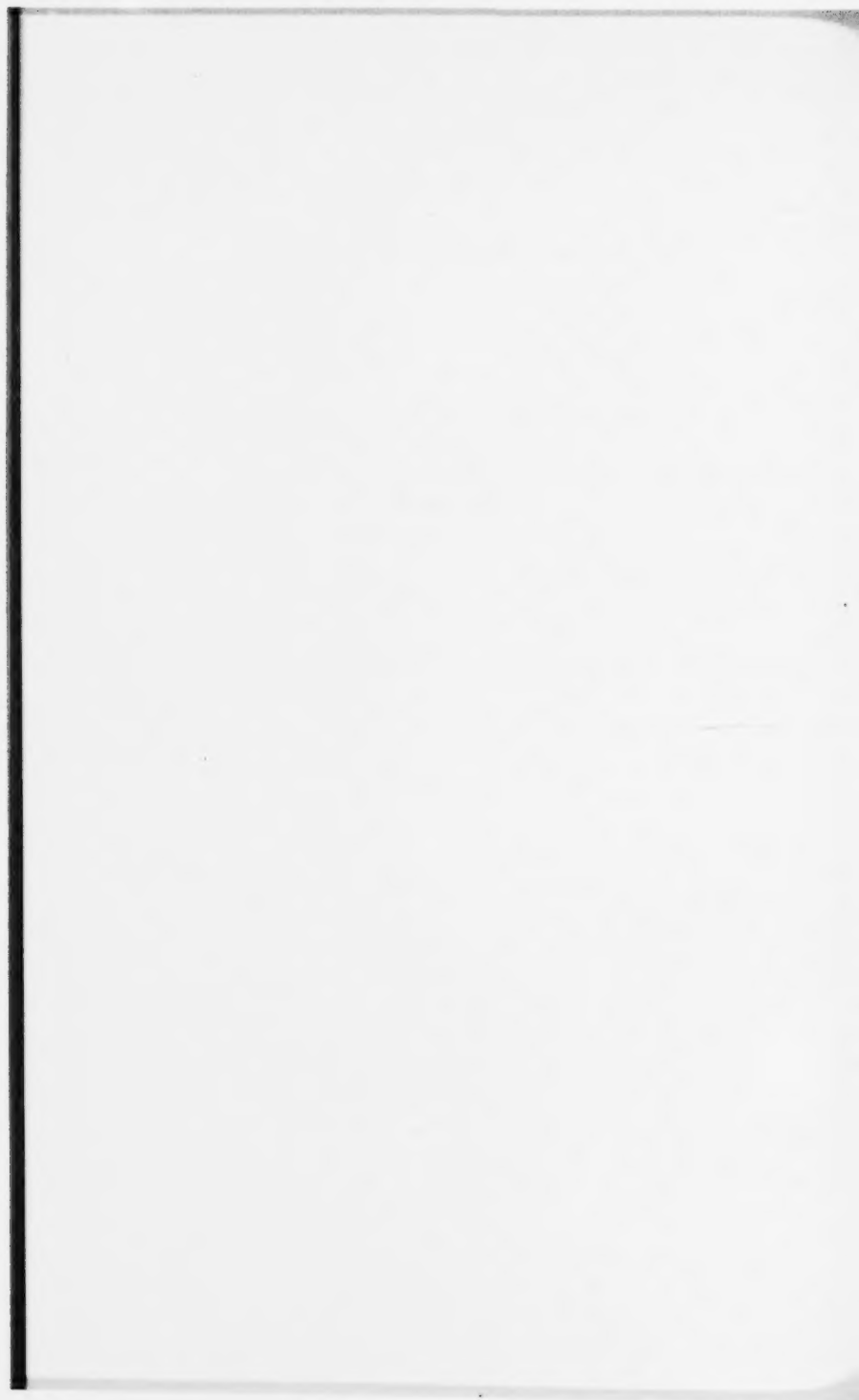


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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 808

RONALD L. TREE and NANCY PERKINS

FIELD TREE, His Wife,

Petitioners,

vs.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO
THE COURT OF CLAIMS

REPLY BRIEF FOR PETITIONERS

The government brief ignores the fact, found by the Court of Claims (R. 26, 27), that the agreement between Marshall Field and Mrs. Tree provided for payment of the agreed sum at all events, and avoids meeting the petitioners' argument of a conflict which was premised upon such unconditional payment.

There is no reference in the statement of the "Question Presented" (Br. 2) to the fixed, unconditional character of the annuity, nor even to the fact

that there was an agreement which determined the amount of the payment. In the "Argument" the brief says that "the agreement simply fixed the amount to be paid by the trustees out of the income" (Br. 9, 10). This is not the fact. The agreement fixed the amount to be paid "even if the income received by the trustees from Henry's share was not sufficient" (R. 26, 27). Later on the brief sidesteps the real question in the case and ignores the Court of Claims finding (R. 26, 27) on certainty of payment, by asserting that it "is unnecessary to speculate as to what would happen if the trust income were insufficient to pay the \$85,000 per year or whether in such event Marshall Field III would be bound to make up the deficit." (Br. 11.)

The government's citation (Br. 10) of the decision in *Continental Illinois Nat. Bank & Trust Co., Trustee, v. Commissioner*, 40 B.T.A. 25, is irrelevant to the question raised by plaintiffs. The payments there were clearly deductible by the trust as held in that case and taxable to the beneficiary, but the question is: *To whom* are the payments taxable, that is, *who* is the beneficiary? The payments made to Mrs. Tree by the trustees were simply a disposition by Field of his income in discharge of his unconditional obligation to pay the agreed fixed sum.

The government in citing (Br. 10) the decision in the *Butterworth* case (*Helvering v. Butterworth*, 290 U. S. 365, 78 L. ed. 365) fails to state that the annuity there was payable solely out of *income*. And in referring to the *Pardee* case (decided with the

Butterworth case), the brief says that this Court held that where an annuity under a will "was payable at all events and did not depend upon income from the trust estate," the widow-recipient was not taxable (Br. 10), thus again erroneously implying that the \$85,000 annuity to Mrs. Tree was conditioned upon the trust realizing that amount of income.

Finally, the government says that, "even if an assignment of income be deemed to have been made" by the agreement (as though the plaintiffs had argued that there was an assignment and the government were, for the argument, conceding the point), the decision of this Court in *Blair v. Commissioner*, 300 U. S. 5, 81 L. ed. 465, would render the annuity taxable to Mrs. Tree (Br. 11). As to this argument, the *Blair* decision would, of course, support the decision below if there *were* an *assignment* of an interest from which the income was received, but the question here is *whether* there was such an assignment. It seems clear enough that the provision for payment out of the trust income was simply *security* for payment of the fixed annuity agreed upon by Marshall Field before the decree was entered as distinguished from a transfer to Mrs. Tree of *ownership* of an interest in the trust. The government again chooses to avoid discussion of the real issue presented in this distinction between *security* for payment and absolute *ownership*, although the distinction is recognized in one of the government's own citations (Br. 12), *Pearce v. Commissioner*, 315 U. S. 543, 86 L. ed. 1016.

The failure of the United States to meet and answer the petitioners' reasons for granting the writ strongly suggests that it was not deemed feasible to do so.

Respectfully submitted,

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February, 1945.

